LIABILITY INSURANCE

By W. F. Moore,
President of New Amsterdam Casualty Company of New York.

While marine insurance was practiced along modern lines as early as the twelfth and thirteenth centuries, and while life and fire insurance companies seem to have had their beginning in the seventeenth century, employers' liability insurance—or, as in the gradual broadening of its scope it has come to be known, Liability Insurance—is a comparatively recent production. The first policy of this kind of insurance was issued in England in 1881. Until 1889 this class of insurance in Europe and America together had not reached a sufficient volume to attract any particular attention. Since that time, however, it has become a factor of considerable importance in economics both here and abroad and affords a field for much study and the practice of the best judgment.

The necessity for such insurance has for its foundation the burdens imposed upon employers by the workings of that branch of the law relating to negligence, so called. Negligence law, however, existed in some form as far back as there is any definite record, no one having yet been able to clearly determine just when and where it commenced.

It may be well, therefore, to trace in outline what is very aptly termed the "evolution of negligence law" down to the time when employers' liability insurance was adopted as a means of protection against its application.

In early times there were no such fine distinctions as respects negligence as exist to-day. Suits for damages were rare and the plaintiff was usually obliged to prove the damages to have been the result of wilful act.

But while Employers' Liability Insurance is distinctly a modern need, due to the great growth of negligence actions in the past twenty years, the law of negligence has been at least three centuries

in building. Its beginning is lost in the obscurity of feudalism, in which the master, as the owner, virtually, of the body of his servant, answered upon the field of arms to those outside his household who were injured by the wrong of his servants or henchmen. Under the feudal régime there was, of course, no recognition of any right of the servant against the master for the latter's negligence. A feudal master in his own household, like a king, could do no wrong.

The statute of Westminster II (1295 A. D.), allowing the chancellor to grant a new form of action for injury to person or property, marks perhaps the first recorded recognition of a legal remedy for negligence. In the reign of the Plantagnet kings the year-books record no cases of this character. In Comyn's Reports (1695-1740) is found the first collection of negligence cases.

Blackstone, whose now classic "Commentaries" afford us the earliest authoritative exposition of English law in its formative stages, refers only briefly to the master's liability to third persons for his servant's negligence and does not even mention the idea of a master being liable to his employee for his own negligence. Thus he says: "If a servant by his negligence does any damage to a stranger, the master shall answer for his neglect; if a smith's servant lames a horse while he is shoeing him, an action lies against the master and not against the servant, but in these cases the damages must be done while he is actually employed in the master's service, otherwise the servant shall answer for his own misbehavior. Upon this principle, by the common law, if a servant kept his master's fire negligently, so that his neighbor's house was burned down thereby, an action lay against the master."

How great the contrast between the servant's position in that day and in this is emphasized by the further statement of the same author that "If a fire occurs in the master's house through the negligence of any servant, such servant shall forfeit one hundred pounds to be distributed among the sufferers, and in default of payment shall be committed to some workhouse and there kept at hard labor for eighteen months."

Somewhat later we find the earliest recorded attempt by an English judge to formulate the law of negligence. After an exhaustive analysis of the Roman law, Lord Holt, in the celebrated case of Coggs *vs.* Barnard (2 Lord Raymond, 909), in the year 1704 defined three degrees of negligence, viz.: gross, ordinary and slight,

varying in proportion to the degree of care assumed by the person charged with negligence in the act or occupation involved.

The growth of that spirit of individual responsibility which characterizes and animates all Anglo-Saxon jurisprudence soon led the English judges to lay down one broad rule of duty which has since been the basis of the law of negligence, and which, after many modifications, is crystallized in a modern definition as follows: "Negligence, constituting a cause of civil action, is such an omission, by a responsible person, to use that degree of care, diligence and skill which it was his legal duty to use for the protection of another person from injury as, in a natural and continual sequence, causes unintended damage to the latter."

The early cases recognized the liability of the master only to the public or to third persons. The great mass of law from which has been evolved the employer's liability to his own servants for his negligence or for the negligence of one representing him in the pursuance of the employer's duty is the product of the present century. The master's duty, so elaborately presented in the employers' liability acts of four of our states and in many state constitutions, with its intricate modifications, is the product of the present generation. It is a striking fact that more suits for negligence have been tried in the Supreme Court of New York in the last ten or fifteen years than in all the previous experience in that tribunal.

Following old world history, therefore, we may look upon the evolution of the law of the master's or employer's liability as an ever growing tendency of the times, due, doubtless, in large measure, to the changes in the social and industrial condition of the working classes as well as their greater demands and their increased political importance.

The changes in law thus far, however, have been gradual. New rules and tests have been from time to time adopted until the conditions reached a point where the responsibilities of the employer became so burdensome that he was obliged to look about him for some means of protection in addition to the exercise of ordinary care and foresight in the actual conduct of his work. The employer with a limited amount of capital was in constant danger of disaster to his business by reason of exorbitant verdicts obtained because of some technical negligence for which he personally might not be actually and morally responsible, but for which the law might con-

strue the liability against him. This contingency seemed to be a proper subject for insurance, and it has perhaps been pointed out with more or less clearness that, while there was no recognized necessity for such insurance in early times, the evolution of the law of negligence brought about a demand which was finally met by Employer's Liability Insurance. But let us not lose sight of the fact that while this demand was met when the want was most felt, the introduction of insurance as a protection has by no means stopped the march of progress in negligence law.

Under the common law the master or employer is held responsible for personal injuries suffered by his servant or employee if such injuries are due to the master's negligence; the master is likewise held responsible for such injuries to persons other than his employees whether caused by his own or his servant's acts.

There have been numerous limitations and variations of the rule of negligence by statute and otherwise in the several states of the Union, notably by the employers' liability laws heretofore referred to, wherein the duty of the master to the servant is more or less definitely fixed. These laws followed the employers' liability act introduced and passed in the British Parliament in 1880, by virtue of which act the burden was placed upon the master for injuries sustained by the employee by reason of the negligence of a vice-principal, or, in other words, of a foreman or superintendent. Immediately upon the passage of this act of Parliament the form of insurance known as employers' liability insurance was undertaken in Great Britain to protect employers against such loss as might be entailed by its operation, and therefore this, like nearly every other form of insurance, had its origin in Europe. It did not take long, however, for underwriters in the United States to recognize its value as applied to conditions on this side of the water, nor was it long before the employers' liability laws passed in this country and following somewhat closely upon the act of the British Parliament made such an insurance a practical necessity. Within five years after its introduction in England this system of insurance had been launched in America and was immediately accepted and adopted by a large number of employers of labor. At that time our courts were becoming congested with suits for negligence, and insurance providing against damages in such cases was welcomed as a means of protection against such claims.

Within a few years several of our states passed employers' liability laws and others adopted statutes relating directly to the liability of the master to the servant; each being of such a nature as to increase the liability of the employer of labor. It is not surprising then that an insurance which was intended to relieve the employer or master from actual loss under such circumstances should be viewed with favor and that it should take a place in commercial economics so quickly.

There are practically no text-books on insurance which devote any space to this important branch of insurance, but there are whole libraries full of reports on negligence cases both as respects employees and third persons, all of which have a direct bearing upon the principles involved in liability insurance. I will therefore try to place before you in as plain and simple manner as possible the practical working of this kind of insurance.

The purpose of the insurance is stated clearly in the definition used in the laws of the State of New York, which is as follows:

"Insuring anyone against loss or damage resulting from accidents to or injury suffered by an employee or other person and for which the insured is liable."

The employers' liability policy, issued to cover the owner of a factory, begins usually with the following clause:

"The ——— Company does hereby agree to indemnify the assured against loss from the liability imposed by law upon the assured for damages on account of bodily injuries or death accidentally suffered while this policy is in force by any employee or employees of the assured while within the factory, shop or yard described in the schedule, or upon the sidewalk or other ways immediately adjacent thereto provided for the use of such employees or the public, in and during the operation of the trade or business described, etc."

The same general insuring clause is used for many other contingencies of loss from liability, varied of course to suit the given subject, as for instance: Public liability insurance, meaning insurance covering the liability of the employer to persons not in his employ who may visit his plant on business or otherwise; employers' liability insurance for contractors and others employing labor on work not confined to any given locality; public liability insurance for contractors, covering the liability of the contractor to persons

not in his employ who may be injured or killed by reason of the building operations or public work which he is carrying on; general liability insurance, covering the liability of the owner of a building for injuries or death caused by defects in or about the building, or its operation for the use of tenants; elevator liability insurance, relating to the liability of the owner or tenant of a building for accidents caused by the operation of an elevator; teams liability insurance, covering the liability of the owner of horses and vehicles for accidents caused by such teams; theatre liability insurance, covering the owner of a theatre for his liability for accidents occurring in a theatre or place of amusement; vessel liability insurance, covering the liability of the owner of ships, tugs and other vessels, such as barges and scows used for freighting purposes, for injuries or death of any of the crew or of other persons visiting the vessels, and in some cases of the passengers; physicians' liability insurance, covering the liability of a physician, surgeon or dentist, for injuries or death caused by alleged malpractice in the profession of the assured.

The same principle runs throughout all of these different policies. Insurance of other hazards have been from time to time undertaken, but those named are practically all that are in vogue at the present time. The insurance of railroads and other common carriers against injuries to passengers was written by a number of companies some years ago, but experience taught both the railroads and the insurance companies that only where the true principles of insurance are involved can there be any advantage to either party; and it is quite clear that no insurance company could safely assume all the personal injury losses of a railroad company unless it charged a premium equal to the average sum of such losses, plus all expenses and a margin for profit. On the other hand, the railroad company, with a knowledge of the average annual payment for such losses, would not be willing to pay for insurance an amount exceeding such sum, because the plant is usually large enough to establish its own average, and that average loss can be borne by the railroad without danger to its credit. It is not so with the average employer of labor; the storekeeper, the manufacturer, the contractor, the landlord, the owner of vehicles, the owner of a theatre, the owner of a vessel, or the physician—any of these may have his commercial or professional credit seriously impaired by a single suit for damages.

As the theory becomes better understood the possibilities broaden. Steam boiler insurance, an insurance against property damage caused by the explosion of steam boilers, had been carried on for many years in this country, and for a longer period in Europe, prior to the advent of liability insurance, but nearly all such policies at the present time have been so extended as to cover the liability of the owner or operator of the boiler for damages by reason of personal injuries as well as damage to property. New lines are suggested by actual claims that arise and which are not contemplated by any policies now in vogue, and every year marks a step forward in the application of the principle of liability insurance to some new industrial need.

A common definition of insurance is as follows:

"A contract of indemnity whereby one party, in consideration of a specific payment called the 'premium,' undertakes to guarantee another against risk of loss."

The first step, it seems to me, therefore, in this review of liability insurance, having outlined the contract of indemnity that is issued by the insurance company, is to explain how the premium is computed. In all kinds of insurance the exposure, so called, is the basis of the premium charge. It will be well, therefore, to start with the employers' liability policy issued to factory owners and determine what is the exposure. One of the provisions of the policy is that the company shall be liable in a sum not exceeding a certain amount (usually $5,000) for injuries to or the death of any one person, and not exceeding a certain amount (usually $10,000) for injuries to or the death of more than one person injured or killed in any one accident. But the settlement of any loss does not diminish the policy in the least and it runs on with the application of the same amounts to other accidents which may happen in the future during the policy period. The limitations of the policy as respects any one person or any one accident cannot therefore be deemed the exposure. The actual exposure is the danger of injury or death to each employee during one year, or the period of the policy. In industrial institutions it would be impracticable, for the purposes of the insurance, to keep account of the actual time of labor of each individual employee, and therefore in order to establish a measure of relative exposure in given industries, the average wages earned by mechanics, as shown by the United States Census, was taken as

a basis. This amounts to about $500 per annum. Having fixed on this sum (or for that matter any other sum would have been quite as useful) the total amount of wages expended in a given factory in the course of the year, or the term of the policy, if divided by $500 will show the average number of persons employed in the factory for one year. Having adopted a factor on this basis, the first underwriters of employers' liability insurance, with no real basis for rates, were obliged to proceed in more or less of an experimental manner, using the experience of accident insurance companies in this country as a guide. It goes without saying, however, that it would be rather a clumsy method to ascertain the number of men exposed in the manner described and then charge so much per man. A much shorter method is immediately presented, *i. e.,* if it is determined that the rate ought to be $5 for each employee, that sum would be equivalent to 1 per cent. of $500, or one man's wages for one year. The rate, therefore, for the whole risk is easily determined by leaving out any calculation of the number of employees and simply computing the premium as 1 per cent. of the total amount expended for wages during the year. This method was applied to all of the numerous industries sought to be insured, and a rate-book was evolved fixing a rate for about every class of business. The policy is issued based on the estimate of the employer as to the amount of wages he expects to expend during the policy year. At the end of the policy year he is asked to make a report of the exact amount of wages actually expended, and this report is usually verified by an auditor from the office of the insurance company. If the amount when audited is found to be greater than the amount estimated, the employer pays to the company an additional premium, at the rate stated in the policy, on the excess of the estimate. If the amount is less than the estimate, the company returns to him the difference. This is the method of computing the premium for all policies covering employees, the names of employees not being required, the object being to obtain the average number of persons employed during the term of the policy. The term of the policy has, however, no direct bearing upon the amount of the premium, as the expenditure of $100,000 in one month would indicate exactly the same premium as the expenditure of $100,000 in one year, or $500 expended in one week would indicate the exposure of one man for one year. The same method is followed for computing the premium

on public liability policies, on the theory that the greater the number of employees, the greater the hazard to the public. On the other lines of liability insurance the method is necessarily varied to fit the conditions.

The premium on a general liability insurance policy, which covers the liability of the landlord on account of accidents due to defects in the building, etc., is computed on the measurement of the building and its frontage on public thoroughfares, and other exposures, such as the use of elevators in the building. The premium on an elevator insurance policy is computed at a certain price for each elevator, experience having indicated the proper charge to be made on this basis; and the same is true of teams insurance. In theatre insurance the charge is made usually on the number of seats in the theatre. In vessel insurance, a charge is made for employers' liability on the basis of the wages; public liability on the same basis, and if passengers are insured in any way a charge is made based upon the receipts from passenger traffic. In physicians' liability policies the premium is a fixed sum for each physician.

The premium rates originally charged are found now in many cases to be totally inadquate. Not only because of faulty judgment in the beginning, but because the cost to the insurance company has been vastly increased by a continued disposition on the part of courts and legislatures to draw lines closer and place greater burdens on the employer, which burdens, by reason of insurance, fall upon the companies. The schedule of rates has been amended from time to time because it became clear that a risk hazardous for personal accident insurance might be non-hazardous for liability insurance, and vice versa; so that during the experimental stages of the business in this country the schedule of rates used by the several companies came to differ considerably, each company accepting business according to its judgment, which in many cases proved to be bad. Some nine or ten years ago all of the stock companies in the country, with one exception, became associated for the purpose of determining the actual cost of insuring the many different hazards to which liability insurance is applicable. It was deemed wise to collate the past experience of all companies to determine the actual cost in loss payments as against actual exposure. As this work went on important information was compiled resulting in

many changes in rates. The method of ascertaining the proper premium charge on an employers' liability policy was to select a given industry and ascertain the total amount of wages expended on all such insured risks for a given period of years, against which were placed the total losses incurred on the same business in the same years. Having these figures it was easy to ascertain the cost in loss for each one hundred dollars of wages expended, and to this cost must be added a sum sufficient to cover expenses and leave a margin for profit.

The expense of securing and handling employers' liability insurance is very high, being approximately 50 per cent. of the premium. The loss, therefore, should not be more than 40 per cent. if a company expects to have a margin of 10 per cent. for profit and contingencies. A simple method was adopted for computing a proper rate of premium by multiplying the net loss cost by 2½. For example, if the experience of all the companies showed that for each one hundred dollars of wages expended forty cents was paid in losses, the premium charge for an insurance policy on that class of business should be two and one-half times forty cents, or $1, and for a policy based on $100,000 payroll, written at 1 per cent., the premium would be $1,000. If such policy carried a normal loss ratio (which would be 40 per cent.), the loss would be $400; the average expense would be 50 per cent. or $500; a total of $900 paid out, leaving $100, or 10 per cent., for the company's margin to cover profits and contingencies. Practically the same method of compiling experience of all companies was followed in all the different lines with good results. Certain difficulties presented themselves because the general average did not apply to the same class of industries in different parts of the country. In almost any other line of insurance the schedule of rates once established in this way would be a true guide for the future. In liability insurance the same rule does not apply because the schedule established and found to be correct for to-day might be absolutely incorrect for the future by reason of the changes in laws and social conditions each year.

Environment is a serious factor in liability underwriting; not, however, from the same cause that governs other lines of insurance. There are about as many people injured or killed in a given occupation in one part of the country as in another, but the social conditions obtaining in the different sections influence matters of adjust-

ment and of suits to a great degree, as does also the actual difference in statutory provisions.

In the comparatively new states the population is not so homogeneous as in the older and more conservative communities, where whole families for generations have been employed in one industry or mill or factory. Under the latter conditions few claims are made, because the employer is likely to be in close touch with his employees, and his kindly treatment for years will always have an influence on his workmen and tend to prevent excessive claims for slight injuries.

On the other hand, in localities where the working classes are made up largely of immigrants from foreign countries, or in any event, is of a cosmopolitan character, no such good feeling exists or is likely to exist, and when claims are made for indemnity on account of injuries sustained, the sums demanded assume proportions which, if paid, would be a menace to the successful continuance of a business or trade where mechanical labor is a chief factor; and in such communities when claims are resisted and carried into the courts, unreasonable verdicts are frequently the result, presumably because the juries, being drawn largely from workingmen, are to a great extent in sympathy with the same class as against corporations and capitalists.

Beyond these factors in environment is the application of the law in the several states of the country. In some states the fellow-servant rule is strictly adhered to, while in others this rule is made elastic and decisions are usually favorable to the injured person; and in still others the rule is abrogated altogether. Promise to repair, proximate cause, contributory negligence, presumption of negligence and many other legal subtleties are also widely divergent in application, to such an extent that, in the matter of underwriting and rate making all these conditions must be considered as having a direct relationship to the selection of risk.

The general average of wages, too, does not always obtain, and it is a notable fact that the nature of employment and the character of workmen in some states decrease the premium per capita, by reason of the local low rate of wages, while the hazard is in no wise proportionately improved, but on the contrary is likely to be worse because of the lower grade of intelligence of the laborers.

It is a fair assumption that no two states are exactly alike from

an underwriting standpoint, and this sets up another difficulty in the way of establishing any rule of procedure which would be mathematically correct for the whole country. Each state must be rated and underwritten on the basis of the existing or changing conditions to be found in the given locality, and most companies engaged in liability business tabulate statistics in such a manner as to be able to determine the loss percentage by states.

It may be interesting to note that there are more than twelve hundred classifications of risks in the manual of rates at present in use by the liability insurance companies, and that each one of these must be separately tabulated and the results grouped as to relative hazards, and this information in turn subdivided as to states. Every careful company doing this class of business maintains a bureau for actuarial work of this nature, and while the compilation of the whole has never been effected, the business of a sufficient number of companies has been compiled to serve as a general guide.

In explaining how the premium is computed I have stated that a normal loss ratio is 40 per cent., but from this it must not be assumed that the company is making a profit of 60 per cent. The expense of conducting the business is very great; the commissions are heavy, and other expenses are large. An examination of the record of all of the companies engaged in this class of business for the past ten years will show an average expense ratio of approximately 50 per cent. The rate of commission alone will average between 25 and 30 per cent., to which must be added the salaries and traveling expenses of special representatives; rent and other expenses of branch offices; cost of surveys and inspections; home office expenses; rent, clerk hire, and a multitude of other small charges; the result being, as already stated, approximately 50 per cent. paid out for expenses.

In connection with the item of expense let us revert for a moment to the method of determining the premium. In most employers' liability policies to-day will be found the following clauses:

"The premium is based on the entire compensation whether for salaries, wages, piecework, overtime or allowances earned by the employees of the assured during the period of this policy; whenever employees are compensated, in whole or in part, by store certificates, board, merchandise, credits or any other substitute for cash,

the amount of compensation covered by such substitutes, shall be included in the entire compensation on which the premium is based. If such entire compensation exceeds the sum set forth in the schedule, the assured shall immediately pay the company the additional premium earned; if such compensation is less than the sum set forth in the schedule the company will return the unearned premium, when determined.

"Any of the authorized auditors of the company shall have the right and opportunity, whenever the company so desires, to examine such books, records and works of the assured as the company may deem necessary to ascertain the compensation earned by the employees of the assured, and the assured shall render reasonable assistance; but the company waives no right by failing to make such examination. The assured shall, whenever the company so requests, furnish the company with a written statement of the amount of compensation earned by his employees during any part of the period of this policy, and at the end of the period of the policy the assured shall furnish the company with such statement covering the full period of the policy. The rendering of any estimate or statement or any settlement shall not bar the examination herein provided for nor the right of the company to additional premiums."

These agreements refer only to such insurances as are based upon wages or compensation to employees, but whenever the premium is based on an estimate similar provisions are made, and it will be seen that they have a direct relationship to the matter of expense. The assured first estimates the amount he expects to expend by way of wages or compensation during the policy term. At the end of the policy term, or in fact at any time during the policy term, the company may ask for a statement of wages actually expended. Such a statement is not always rendered, and sometimes when rendered is incomplete, and the company, under its policy agreement, then audits the books and records of the assured in order to ascertain the exact facts. In the early years of the business such audits were rarely made, a sworn statement of the assured being accepted when there was any doubt. In later years, however, the audit system has been so expanded and improved that most of the companies are making an audit of practically every policy, and these audits are not the least of the expense in connection with this class of business.

Another large item of expense is that of mechanical inspections. Each company maintains an inspection bureau, in connection with which a staff of inspectors who are skilled mechanics must be employed; the theory of the insurance being that the assured is afforded the protection of this service in addition to the indemnity provided by the policy. A passenger elevator, for instance, is a very useful contrivance, and in the past twenty years has come into general use. It is a very dangerous device, however, unless its mechanical parts are very carefully scrutinized periodically and all dangers or defects removed or remedied. It is estimated that $750,000 is the amount expended for such mechanical inspections by liability companies annually, and this expenditure for the most part is for inspection of steam boiler and elevator plants.

In these two branches of liability insurance the matter of inspections is considered of greater importance than in any other. While it cannot be shown definitely that inspections have actually prevented accidents, it is nevertheless true that many serious defects have been discovered and remedied. The inspection system is being gradually extended to all classes of risks, on the ground that an independent inspection by practical men is likely to influence employees in the direction of greater care and good order in the given plant, and so tend to a diminution of the number and seriousness of accidents.

The adjustment of losses under liability insurance policies is far more difficult than adjustment under any other form of insurance. It must be remembered in the first place that the injured person has no claim against the company. The fact that a person is injured does not mean that the company is obligated to pay. The company stands in the position of the attorney of the assured, assuming the same duties that any paid attorney would undertake, with the added obligation of paying the damages if any damages be the result of a trial at law; the limitation of the company's liability for such damages being stated in the policy. Under such conditions, of course, it frequently happens that where the company deems it wise to make a compromise settlement, it makes such settlement without awaiting a legal adjudication. Such settlements, however, are matters of judgment on the part of the company; the real theory of the insurance being protection for the assured against loss by reason of

judgments for legal liability. In practice the claim adjustment works out somewhat as follows:

The assured notifies the company that one of his employees has met with an injury and this notification is usually made upon a blank form furnished the assured for such purpose. It is not often that sufficient information is given to determine whether or not the employer is liable under the law, and the necessity arises at once for an inquiry into the facts. This investigation is made by one of the investigators employed by the company, who gathers such information as he is able to obtain and makes his report to the company. From this report the company may be able to obtain a sufficient view of the case to determine whether or not there is any liability on the part of the assured. More frequently, however, the investigator will be required to make numerous visits to the plant of the assured before all the facts can be ascertained. If in the judgment of the company the assured cannot be held liable for the accident, he is so notified, and the injured person is not approached at all. All the documents in the case, however, are carefully filed so that in the event of a future claim the information will be ready at hand. If, on the other hand, the matter appears to be a case of negligence and a claim is likely to be made, the investigator of the company is instructed to open negotiations with the injured person and ascertain what settlement can be made as between the employer and the employee; the representative of the company acting always in the name of the employer. This is where the adjusting work begins. All the information that the injured person is able or willing to give, and all the information that can be gathered from the employer or the fellow-employees of the injured person is carefully collated and reduced to writing; sworn statements of witnesses are taken—perhaps a physical examination has been made. In the meantime the injured person is likely to have retained a lawyer in his behalf. What appeared to be an insignificant case in the beginning may be the cause of more adjusting work than a really meritorious claim. Ignorant persons, guided by the pernicious advice of unscrupulous lawyers, will frequently push claims in which there is no merit whatsoever. If a reasonable settlement cannot be effected and the case goes to trial, the company must defend, by its own lawyers, in the name and on behalf

of the assured, and such defense is provided for by the following clause in the policy:

"If thereafter any suit is brought against the assured to enforce a claim for damages by reason of an accident covered by this policy and arising from a liability covered hereby, the assured shall immediately forward to the home office of the company every summons or other process as soon as the same shall have been served on him, and the company will at its own cost defend such suit in the name and on behalf of the assured."

The company being liable within the limitations of its policy for any loss by reason of a judgment rendered against the assured, is likely to recognize the wisdom of employing the very best skill in the defense of such suits, and as it is a well-known fact that the average lawyer in general practice builds up his business by litigation and that the general practitioner is not likely to have (nor can he be expected to have) a broad experience in negligence cases, it has come, therefore, to be the practice among liability companies to employ attorneys on salary; and these men being especially trained in negligence law are likely to exercise the best judgment in the matter of compromises, and also to be better equipped for the actual defense of suits when such cases arise.

In nearly every other kind of insurance it is a comparatively easy matter to determine at the end of each calendar year the number of claims and the amount of loss incurred during each year. In liability insurance, however, this is not the case. A notice of injury, as I have already pointed out, does not necessarily mean the payment of a loss. There are many notices of injury from which no claim accrues; there are many others, however, in which, from the early investigation, there appeared to be no liability and upon which claims accrue later on. The policy of any given company covers the assured for any loss which is the result of an accident happening during the term of the policy and of which due notice has been given to the company. This means that the injured person may sue his employer at any time within the statute of limitations, and that when such claim is made or such suit is brought, the company must take up the defense even if the policy is not then in force. Take the case of an employee who is injured in a state where the statute of limitations is six years (and the statute of limitations varies in different states from one year to seven years) the notice

of an injury to this employee, we will assume, is promptly given to the company and the information concerning the accident is gathered and filed in the company's office. No claim is made by the injured employee, and at the end of the policy term the assured decides to discontinue the insurance. Just before the expiration of six years from the date of the accident, however, the injured employee has a disagreement with his employer over a more or less trivial matter, and is discharged. Remembering the injury which he received nearly six years ago, and desiring to make as much trouble as possible for his employer, he brings suit. The company must take up such a case and defend it, notwithstanding the fact that the policy lapsed and was not renewed at its expiration. Such a litigation might easily extend over five years, so that it will be eleven years from the time of the accident before the issue is finally determined.

In the case of a minor the time would be still further extended because the statute of limitations would run from the time when the injured person became twenty-one years of age. Under these circumstances it will be clear that it is next to impossible to determine accurately at the end of any given year what loss has actually accrued. In many of our courts a case is not likely to be reached under two years after its commencement and the proverbial delays of the law make it entirely uncertain when a final determination will be reached.

There has been much floundering among the companies in an endeavor to arrive at a fair measure of what is termed "outstanding losses"; the companies for the most part in the past having estimated each notice of injury on its merits. This method left an opening for a wide divergence of opinion, with the result that while some companies laid aside a reasonable amount to meet the contingency of future losses on past notices, others made this fund as small as possible for the purpose of making good financial statements. Within the past two or three years laws have been introduced in several states, the object of which has been to provide a rule for measuring this fund, which would be equally and fairly applicable to all companies. The latest law on this subject is that introduced in the State of New York during the last session of the legislature. This law provides that each company shall set aside a reserve for accrued losses as follows:

1. A certain sum for each suit which is now pending or being defended for a policyholder by the company by reason of a notice received more than eighteen months ago.

2. A certain sum for each notice of injury which has been received by the company within the past eighteen months.

From the sum of these two items may be deducted the amounts actually paid on any notices of injury comprehended by the two items referred to. The balance is considered the amount necessary to settle all claims which will ultimately be made on the company by reason of the notices received down to the time of making the statement. The factors used, or in other words the cost of each suit and the cost of each notice are determined by taking the experience of each company for the first five years of the last ten years. That is to say, each company is required to report to the commissioner of insurance the average amount paid for each suit settled during the first five years of the period beginning ten years ago, and each company is also required to report to the commissioner the average cost of each notice of injury received by the company during the same period. If a company has not been conducting liability insurance for a period of ten years or more it must be governed by factors made up from the average of all of the companies that have been in the business the required time. The effect of this law will not be known until the end of the present year, when the first statements will be made under its provisions. The indications are, however, that many of the companies that have been heretofore estimating the expected future payments on past losses at a small sum will be required to set up as a liability a very much larger amount.

There is a diversity of opinion as to the wisdom of compromising liability claims. Some of the companies hold that it is the duty of the company to act for the assured in exactly the same manner that the assured's counsel would act for him if he had no insurance. On the other hand, it will be admitted, I think, that the counsel of the assured in advising his client is not by any means in the same position as the insurance company, with the function of loss payer as well as adviser. It is reasonable to suppose that the lawyer will give the best advice that his judgment dictates; it is clear also that the insurance company should give the best advice, not only by its judgment and by its actual experience in litigation, but

because it has to pay the judgment for damages obtained by the injured party.

The business in this country has not yet reached that stage where it can be said with any degree of certainty that either is the better policy. It is perhaps fair to assume, however, that the more acceptable method so far as the assured is concerned is a prompt settlement and full release. Under ordinary circumstances settlements can be made to better advantage if negotiated at once than if allowed to drift into the hands of unscrupulous attorneys whose exorbitant fees immediately swell the amount demanded. It is quite true that some sort of a payment for every claim that arises might result in establishing dangerous precedents in large establishments, but it is contended, on the other hand, that most employers prefer that every claim be settled and disposed of at once rather than be put to the trouble and annoyance of suits for damages later on. Thus far those companies which have been undertaking by prompt action to clear away liability have shown the best results, while those which have built up a large amount of litigation in the way of suits against policyholders are as far away as ever from the final determination, although the loss ratio of companies prone to litigation is often shown to be remarkably low, because based only upon actual payments made for losses.

The year 1887 was practically the first year in which there is any record of this sort of insurance in the United States, although some policies were issued in 1886. For the first few years after its introduction in this country no separate records were made, and the volume of premiums received is based more or less upon estimates, but the following table is deemed to be approximately correct:

1887	$150,000	1896	$4,250,000
1888	300,000	1897	4,700,000
1889	650,000	1898	5,100,000
1890	1,120,000	1899	6,400,000
1891	2,100,000	1900	7,700,000
1892	3,000,000	1901	9,000,000
1893	3,500,000	1902	11,500,000
1894	3,700,000	1903	13,700,000
1895	4,000,000	1904	14,700,000

These figures include all kinds of liability policies excepting only the steam boiler premiums, and will indicate the present volume

of this kind of insurance as well as its rapid growth in this country and the probability of its continued expansion until it reaches proportions which will place it eventually on a par with some of the greater lines of insurance.

The natural deduction is that the scope of liability insurance is unlimited. It is not confined by any means to the manufacturing industries, nor alone to employers of labor. Every year some new requirement for such insurance appears, and it is fair to assume that it has by no means reached its limit.

It may be well before closing to point out some of the dangers which are likely to be overlooked by beginners or those who have had no considerable experience in the business. The result of the first year's operations, at the prevailing rates of to-day, is likely to indicate so handsome a profit that the inexperienced manager may be misled into the belief that the rates are excessive. There is probably no other line of insurance so deceptive in this respect, and there is probably no other line of insurance so beset with difficulties and pitfalls as liability insurance. The final result of the first year's business will not be known until the time fixed in the statute of limitations has expired, and if the business is transacted in states where the statute extends six or seven years, it has been shown how long a period the business must run before the actual losses may be determined. It is generally conceded by those longest in the business that the losses shown as having been paid on a given year's business, at the end of the second year will be at least doubled before a final determination of the business of that year. The element of deferred loss is therefore most serious, and while holding out prospects of a very profitable business during the early years, the result has been, in the experience of every company, an ultimate loss ratio dangerously close to the safety line.

There seems to be no question about the firm establishment of this class of insurance in this country. In some European countries the indemnification of injured workingmen has been made one of the normal items in the cost of operation. In other words, the workman is entitled to payment for his injuries without regard to the liability of the employer, and it has been said that while changes of this kind have been going on in Europe, the United States has stood practically still, and that the justice of it is not comprehended in the United States. However that may be, the only changes that

have been made in the laws in this country are along the line of increasing the employer's legal liability and by so much making all the more necessary an insurance such as is furnished by the employers' liability policy. Even if it were possible to so change the relation of the workman to his employer as to compel indemnification of practically all injured employees, the principle would still remain as respects persons not employed by the assured. There is no doubt that legislation and court decisions will affect the business as time goes on, but with the probability of opening up new fields for the same class of insurance along similar lines.